LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 2 1966
JOHN F. DAVIS, CLERK

No. 977

Supreme Court of the United States

OCTOBER TERM, 1965

E. I. DU PONT DE NEMOURS & CO., INC., *Petitioner,*

v.

NORVIN G. MALONEY, JR., *Respondent.*

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMES C. MCKAY
WILLIAM H. ALLEN
ALEXANDER E. BENNETT
701 Union Trust Building
Washington, D. C. 20005
Attorneys for Cross-Petitioner E. I. Du Pont de Nemours & Co., Inc.

Of Counsel:
COVINGTON & BURLING

February 1966

TABLE OF CONTENTS

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statement	3
Reasons for Granting the Writ	3
Conclusion	4
Opinion of the Court of Appeals	1a
Judgment of the Court of Appeals	9a

INDEX TO CITATION

28 U.S.C. § 1254(1)	2

Supreme Court of the United States

OCTOBER TERM, 1965

No.

E. I. DU PONT DE NEMOURS & CO., INC., *Petitioner,*

v.

NORVIN G. MALONEY, JR., *Respondent.*

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in its case No. 18454 insofar as it reversed a summary judgment granted by the district court, the writ to issue only in the event that a writ of certiorari should be issued in No. 1093 Miscellaneous of this Term.

OPINION BELOW

The opinion of the court of appeals (R. 1-9)[1] is reported at 352 F. 2d 936 and is set forth as Appendix A hereto, pp. 1a-8a, *infra*. The district court wrote no opinion.

JURISDICTION

The judgment of the court of appeals which is the subject of this petition was entered on June 10, 1965. (R. 10; App. B, pp. 9a-10a, *infra*). The orders of the court of appeals denying timely-filed petitions for rehearing were entered on October 5, 1965. (R. 14, 242). The time for filing this conditional cross-petition for a writ of certiorari was extended to and including February 2, 1966, by order of Mr. Justice Brennan, dated January 4, 1966. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether, under governing Delaware law, a written contract of employment specifying a duration that "shall be mutually agreeable" to employee and employer permits the employee to assert the creation of a contract for lifetime employment by alleged con-

---

[1] References "(R. ....)" are to the certified record of proceedings in the court below filed with the petition in No. 1093 Misc. References "(J.A.-1, ...)" are to the page numbers of the joint appendix printed for use in the court below in its No. 18454, the judgment in which is the subject of this petition as well as the petition in No. 1093 Misc. References "(J.A.-2, ...)" are to the page numbers of the joint appendix printed for use of the court below in its No. 18874, the judgment in which also is the subject of the petition in No. 1093 Misc. Both joint appendices are included in the additional certified record filed in this Court with the petition in No. 1093 Misc.

temporaneous oral representations that the employee upon deposition has described as no more than assurances of "continuity of employment"?

STATEMENT

The case is stated in cross-petitioner's brief in opposition in No. 1093 Misc., which involves a petition filed by the cross-respondent herein seeking a writ of certiorari to review the judgment below insofar as it was unfavorable to cross-respondent.

So far as involved in this petition, the judgment below reversed summary judgment entered against the cross-respondent Maloney, a former employee of cross-petitioner, on his claim that he was entitled to lifetime employment by cross-petitioner because of alleged oral assurances by cross-petitioner of cross-respondent's "continuity of employment." (J.A.-2, 65; see J.A.-2, 54-66). The district court held that the term of the written instrument concerning employment specifying that the duration of employment "shall be mutually agreeable" (J.A.-1, 33, 35) meant that cross-respondent's employment was terminable at will. (J.A.-1, 122-23). The court of appeals held that the instrument created no enforceable contract in this respect under applicable Delaware law, and it remanded the proceeding for trial on the issue whether a valid and enforceable contract for lifetime employment was created by the alleged oral representations. (Pp. 2a-8a, *infra*).

REASONS FOR GRANTING THE WRIT

In its brief in opposition in No. 1093 Misc., filed contemporaneously herewith, cross-petitioner has stated its view that the questions there presented do not

warrant review by this Court. The question presented herein deals with the same judgment as, and is related to the questions presented in, the petition for writ of certiorari in No. 1093 Misc. If the questions there presented are to be reviewed, cross-petitioner submits that the Court should have the entire case before it for decision. We are therefore filing this cross-petition for certiorari, which we ask be granted only in the event that the petition in No. 1093 Misc. is granted.

CONCLUSION

If the petition in No. 1093 Misc. is granted, this petition should be granted.

Respectfully submitted,

JAMES C. MCKAY
WILLIAM H. ALLEN
ALEXANDER E. BENNETT
701 Union Trust Building
Washington, D. C. 20005

Attorneys for Cross-Petitioner E. I. Du Pont de Nemours & Co., Inc.

Of Counsel:

COVINGTON & BURLING

February 1966